Special Investigations Unit : Annual report 2003-04

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SIU Annual Report

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Message from the **Director**

The Special Investigations Unit (SIU) is an agency devoted to the civilian oversight of certain types of police conduct. As with many public institutions, the SIU was developed in response to a specific need and has, over time, evolved into something more. I believe that is a good thing. The fact that the SIU has demonstrated it is an agency that is capable of growth and evolution makes it vibrant and vital.

There are many challenges ahead for the SIU. We will have to adjust our practices in response to changes in the law. We will have to be mindful of the changing nature of some aspects of police work. In the "Looking Forward" section of this year's report we detail some of the challenges the SIU and those involved in police oversight will face in the near future. We will also be mindful of the necessity to be fiscally responsible as we face the challenges ahead. Through it all we will strive to professionally and thoroughly investigate all incidents that fall within our mandate and to conduct our work in a way that is seen by all to be effective, efficient and fair. Our commitment is to ensure that everyone sees that there is one criminal law for all the citizens of Ontario.

James L. Cornish
Interim Director

About the Special Investigations Unit

Mission and Mandate

The mission of the Special Investigations Unit (the "SIU" or the "Unit") is to increase the confidence of the citizens of Ontario in their police services, by conducting professional and independent investigations of incidents involving the police that have resulted in serious injury, including sexual assault, or death.

The SIU is a civilian law enforcement agency that operates independently of any police service and at arms-length from the government, reporting to the Attorney General only after an investigation is concluded. Its jurisdiction includes all municipal, regional and provincial police services across Ontario, of which there are 62, employing altogether about 23,300 officers.

The SIU has the authority to conduct investigations and the Director is empowered under the *Police Services Act* to charge police officers with criminal offences when the evidence warrants. (The words "criminal offences" as they appear in the *Police Services Act*, are understood to refer to offences under the *Criminal Code of Canada* and not to offences under provincial statutes, such as the *Highway Traffic Act*.)

The role of the SIU is not necessarily to lay charges, but to investigate and assure the community that the conduct of police is subject to public scrutiny. History has shown that in the majority of investigations, evidence of criminal activity is not found and no charges are laid. In fact, over the past 10 years, charges have been laid in just 2.1% of the incidents investigated by the SIU.

The chart below summarizes case occurrences since 1994-95:

SIU Occurrence Chart
Historical Overview

Type of Occurrences	94-95	95-96	96-97	97-98	98-99	99-00	00-01	01-02	02-03	03-04
Firearm Deaths	2	4	9	4	1	3	5	4	1	2
Firearm Injuries	11	16	12	10	9	8	8	5	9	8
Custody Deaths	14	24	24	12	18	21	18	20	17	26
Custody Injuries	93	54	42	52	65	60	85	75	86	90
Other Injuries/Deaths	n/a	n/a	n/a	n/a	n/a	1	2	1	1	0
Vehicle Deaths	11	6	8	5	12	10	8	12	7	9
Vehicle Injuries	80	55	57	56	64	43	36	30	21	41
Sexual Assaults	11	9	8	9	11	10	15	15	9	16
Totals	222	168	160	148	180	156	177	162	151	192
# of cases in which charges laid (number of officers charged)	3	4	3	2	3 (6)	6 (6)	5 (9)	4 (5)	4 (4)	2 (2)

The Investigative Process

The primary objective of each investigation conducted by the Special Investigations Unit is to determine whether there is evidence of criminal wrongdoing by carrying out thorough and professional investigations.

What We Can Investigate

The SIU has a consequence-based jurisdiction to conduct criminal investigations into incidents involving the police and civilians that have resulted in a serious injury or death. Complaints involving the conduct of police that do not involve a serious injury or death are referred to the appropriate police services and other agencies such as the Ontario Civilian Commission on Police Services (OCCPS).

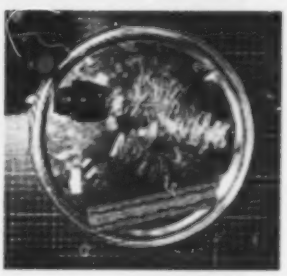
How the Process Works

The onus is on the involved police service to report any incidents of death or serious injury that may reasonably fall within the SIU's jurisdiction. That is not to say that notification may only be given by police services. The SIU regularly receives and acts on requests from complainants, members of the media, lawyers, coroners, and those in the medical profession to investigate incidents they believe fall within the SIU's mandate.

The Investigation

The investigative process begins with the assignment of a lead investigator and as many other investigators as required. Investigations typically involve:

- Examining the scene and securing all physical evidence;
- Seeking out and securing the co-operation of witnesses;
- Notifying next of kin, monitoring the medical condition of those who have been injured, and keeping the families informed on how the investigation is progressing;
- Consulting with the coroner if there has been a death;
- Securing police equipment for forensic examination; and
- Submitting an investigative brief which is reviewed by the Investigative Supervisor, the Executive Officer and ultimately, the Director.



The Unit's in-house forensic identification team participates in investigations by providing technical advice and assistance to investigators about the potential significance of physical evidence. The forensic team is responsible for protecting, collecting, preserving, and analyzing the physical evidence related to the incidents under investigation. Technicians are also responsible for interpreting trace evidence and recording the autopsy process in the case of death investigations.

When an investigation is completed, a report is submitted to the Director of the SIU. An SIU investigation always leads to a decision by the Director about whether there are reasonable grounds for a criminal charge to be brought against a police officer or officers. Once the Director's decision is made, the Attorney General is notified and the case is closed. In cases where a charge is laid, the SIU refers the matter to the Crown Attorney, who prosecutes the charge through the court system.

SIU PART TWO

The Year in Review

Investigative Excellence

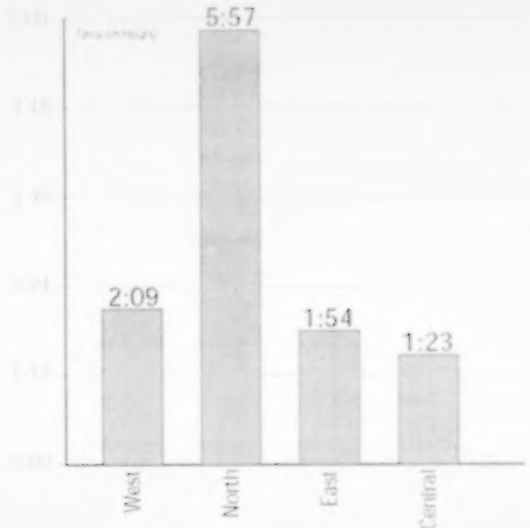
Both the broader community and police services must have confidence in the work of the SIU if it is to fulfill its mission. The staff are committed to investigative excellence so that the Director's decisions will be made upon the basis of professional and rigorous investigations. Some of the measurable hallmarks of investigative excellence include:

- the speed with which investigators and forensic identification teams arrive at an incident scene;
- the number of investigators and forensic identification technicians deployed to the incident scene;
- the length of time that it takes to complete a thorough investigation; and
- the professional demeanour of SIU investigators in contact with the involved police service and community members (as assessed by police services and members of the community).

Response Time

The SIU has full-time and as-needed staff across the province that can be deployed to an incident scene in a timely manner. The Unit measures the time it takes investigators to arrive at an incident scene in those cases where an immediate response is required because there is a physical scene to process. The average response time improved in the north and the east in 2003-04 and remained approximately the same in the west and central regions.

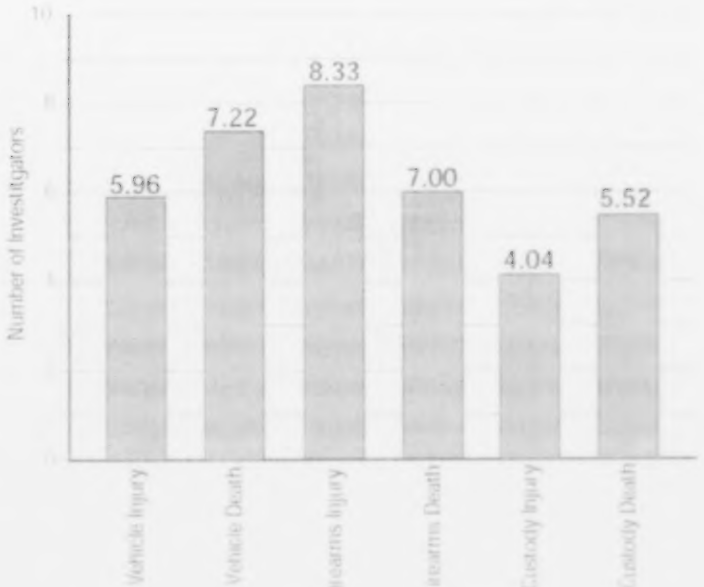
Average Response Time By Region 2003-04



Deployment

SIU Investigative Supervisors use their judgment, based on the nature of the report, to dispatch the appropriate number of investigators to the site of a reported incident. Initial deployment is often front-loaded to ensure that all possible investigative requirements can be quickly addressed.

Average Number of Investigators by Case Type 2003-04



Closure Rate

The closure rate is based on those cases closed by the Director's decision to conclude an investigation. Cases in which charges are laid are not closed because further investigation and legal proceedings may take months or even years. The closure rate then is the length of time it takes from the point an incident is reported to the decision not to lay a charge. The Unit continuously strives to conclude its investigations as expeditiously as possible, but not at the expense of thoroughness and rigour.

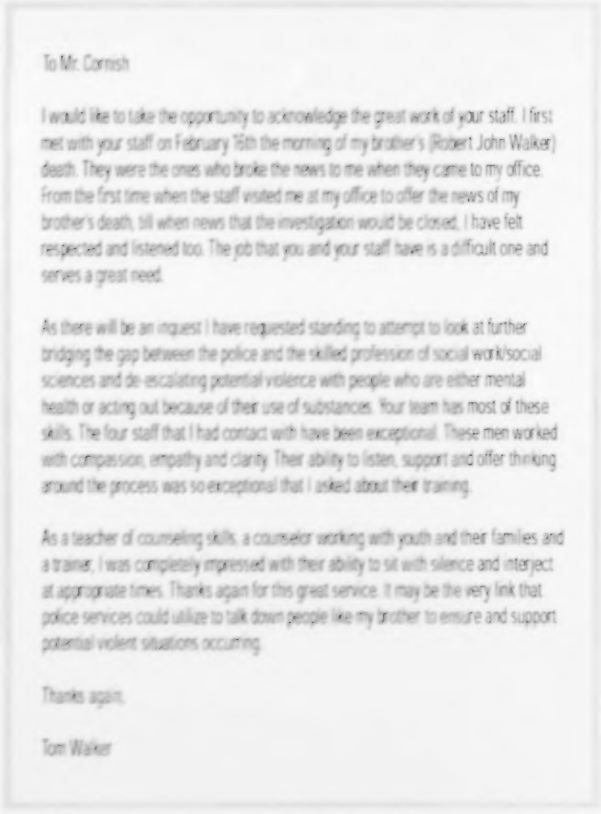
The SIU has set an internal performance standard of closing 65% of its cases within 30 days. As the chart below shows, this standard has been met for the last three years.

Case Closure Statistics

	1989-99	1999-00	2000-01	2001-02	2002-03	2003-04
Total # of Cases Closed	177	150	172	158	142	182
Average # of days to close	49.1	36.9	30.37	20.08	14.68	22.26
# of cases closed within 30 days	71	77	107	110	131	139
% of cases closed within 30 days	40.10%	51.30%	62.90%	69.60%	92.25%	76.37%

Case Follow-up

The SIU follows up after the conclusion of every case with the family of the deceased or with the injured complainant. The lead investigator provides to them the results of the investigation and the Director will meet with them personally if they should so wish. Beyond maintaining the confidence of persons intimately affected by the case, the SIU also receives constructive feedback about the impact of the investigations upon complainants and families.



To Mr. Cornish

I would like to take the opportunity to acknowledge the great work of your staff. I first met with your staff on February 16th the morning of my brother's (Robert John Walker) death. They were the ones who broke the news to me when they came to my office. From the first time when the staff visited me at my office to offer the news of my brother's death, till when news that the investigation would be closed, I have felt respected and listened too. The job that you and your staff have is a difficult one and serves a great need.

As there will be an inquest I have requested standing to attempt to look at further bridging the gap between the police and the skilled profession of social work/social sciences and de-escalating potential violence with people who are either mental health or acting out because of their use of substances. Your team has most of these skills. The four staff that I had contact with have been exceptional. These men worked with compassion, empathy and clarity. Their ability to listen, support and offer thinking around the process was so exceptional that I asked about their training.

As a teacher of counseling skills, a counselor working with youth and their families and a trainer, I was completely impressed with their ability to sit with silence and interject at appropriate times. Thanks again for this great service. It may be the very link that police services could utilize to talk down people like my brother to ensure and support potential violent situations occurring.

Thanks again,

Tom Walker

The SIU recieved this letter after meeting with Mr. Tom Walker. The SIU investigated the circumstances of his brother's death, Robert Walker, in Febuary 2004.

As part of its quality assurance program, the Unit is committed to reviewing investigations with involved police services. In 2003-04, the SIU conducted 11 case reviews with eight different police services across the province. The purpose of the reviews is to elicit information from police services about the investigative response of the SIU, which helps to ensure that standards are being met and that opportunities for improvement are explored. Police services are asked about the SIU's performance across a number of criteria. These include timeliness of response, conduct of the investigation, and the degree of co-operation in the working relationship between the SIU and the police service. During the first part of the review the police service completes a questionnaire. Based on the responses, the SIU and the police service may then meet face to face to discuss specific issues that arose during the course of the investigation. These reviews may be initiated either by the SIU or at the request of a police service.

Investigations in 2003-04

The SIU conducted 192 investigations in the fiscal year ending March 31, 2004. This is the highest number of cases since 1993-94; however, despite the increase in the number of investigations over the past year, the number of charges did not go up correspondingly. Charges were laid in two cases meaning that in approximately 99% of cases the evidence did not support a reasonable belief of criminal wrongdoing on the part of the police.

Occurrences April 1, 2003 – March 31, 2004

Types of Occurrences	#	Types of Occurrences	#
Firearm Deaths	2	Other Injuries/Deaths	0
Firearm Injuries	8	Vehicle Deaths	9
Custody Deaths	26	Vehicle Injuries	41
Custody Injuries	90	Sexual Assaults	16

Total Occurrences: 192
Number of cases in which charges were laid: 2
Number of officers charged: 2

SIU Charge Cases by Type

Types of Occurrences	1999-00	2000-01	2001-02	2002-03	2003-04
Firearm Incidents	0	0	1	0	0
Custody Incidents	1	3	1	3	0
Vehicular Incidents	1	1	2	0	0
Sexual Assaults	4	1	0	1	2
Total	6	5	4	4	2

The regional distribution of cases is generally consistent with population distribution. An exception is the central region where its share of cases (56.7%) is lower than its share of the provincial population (62%).

Percentage of Cases by Region (2003-04)

	Central	West	East	North	Total
Number of Cases	109	34	27	22	192
Percentage	56.77%	17.71%	14.06%	11.46%	100.00%

Terminating an Investigation

The first step in the investigative process is to initiate an investigation of the reported incident. If the facts establish that the incident does not fall within the SIU's jurisdiction, the Director is consulted and, as appropriate, will exercise his/her discretion to *terminate* the investigation. In 2003-04, 54 cases were terminated, up from 38 cases in 02-03, because it was determined that there was not in fact a serious injury, or there was patently nothing to investigate.

For example:

- The SIU was notified of an incident in which a woman put a knife to her throat and threatened to kill herself as police attempted to apprehend her in relation to a criminal matter. A police dog was released and bit her on the leg. This injury required three sutures. Far more serious was an injury to her upper thigh, which required 20 external and 30 internal stitches. The treating physician reported that the injury on the thigh was not caused by a dog bite, but was caused by a sharp object such as a knife. As the dog bite was not a serious injury, and the injury to the thigh appeared to be self-inflicted, the four-day investigation was terminated.
- The SIU was notified that a police tactical squad was in the process of containing a home, when officers encountered a man outside the residence. A shot was fired and the man was fatally wounded. The investigation established that the nearest police officers were approximately 20 to 25 metres away when the man shot himself with a rifle he was carrying. The SIU concluded that the suspect took his own life and the investigation was terminated after six days.

Non-Jurisdictional Incidents

There was also an increase in the number of requests from the public to investigate incidents that clearly did not fall under the SIU's jurisdiction, rising from 160 in 2002-03 to 220 in 2003-04. Where appropriate, these were referred to other agencies.

For example:

- An individual called to complain that she had not been treated with respect by members of a police service. The jurisdiction of the SIU was explained to her, and she was referred to OCCPS.
- A caller complained about an altercation he witnessed between a police officer and an unknown male, stating that he felt it involved police brutality. A follow-up phone call by the SIU to the involved police service revealed that there was no injury. The complainant was advised of the SIU's limited jurisdiction and the fact that there was no injury in this case.

Examples of Cases

The following cases illustrate the range and complexity of the work undertaken by the SIU. The names of the injured parties and the police officers are not included. The information included in the case studies has already been released to the public and the corresponding news releases can be found on the SIU website by referring to the case number.

04-TFD-003

At approximately 6:00 pm on January 11, 2004, Toronto Police Service officers were dispatched to investigate a threatening complaint. They attempted to speak to the man who had allegedly made the threats, but were unsuccessful in doing so at his home. Two officers proceeded through an alley that ended at the man's backyard, where they saw him with a shotgun. One officer called out a warning, and was shot and fell to the ground. The subject officer, who had remained on the street at the end of the alley, saw the man standing near the fallen officer with his shotgun and ordered the man to drop his firearm. When he did not do so, the subject officer fired at him. The wounded were transported to the hospital, where the man was pronounced dead, and the officer was admitted for treatment.

The SIU deployed five investigators and three forensic technicians to the scene. Two witness officers and one subject officer were designated. During its five-week investigation, the SIU interviewed 14 civilian and police witnesses. Forensic technicians conducted a thorough examination of the scene and collected relevant evidence.

Based on the evidence gathered during the investigation and the circumstances of the shooting, the Director concluded that the officer was legally justified in shooting the man.

03-OFI-165

At approximately 11:50 p.m. on November 16, 2003, a Belleville Police Service officer stopped a vehicle that was wanted by police in connection with an investigation. The passenger exited the car and proceeded to walk away while displaying two handguns. Police pursued him, and initially lost him, but located him an hour later at which time a confrontation took place. The man pointed one of his guns at the police and the subject officer discharged his gun twice. One of the shots hit the man in the arm. He was taken to the hospital for treatment and then released into police custody.

The SIU assigned nine investigators, including forensic identification technicians, to the incident. One subject officer and seven witness officers were designated. The investigators canvassed the area around the scene and conducted interviews with 19 police and civilian witnesses.

The Director of the SIU determined that the officer was legally justified in discharging his firearm at the man.

03-PFD-124

On August 27, 2003, OPP officers were dispatched to Grassy Narrows First Nation to search for a youth who reportedly shot at another man. Police conducted a canine search and found the youth lying on his back pointing a shotgun in the direction of the officers. For nearly two hours the police communicated with him, including a negotiator who attempted to persuade the youth to surrender peacefully. As negotiations deteriorated, the youth sat up, refused to comply with orders to lay the gun down, and moved it so that it was pointing in the direction of officers. Police discharged an ARWEN rifle (using "rubber bullets") in an attempt to disable him and an officer moved forward to affect an arrest. The youth was not completely disabled, however, and moved the gun in the direction of some of the officers in the vicinity. Two officers fired at the youth. One of these shots caused a fatal wound to his head.

On receiving notification of the incident, the SIU deployed six investigators, including a forensic identification supervisor and technician to Grassy Narrows. One OPP officer was designated as a subject officer and 13 others were designated witness officers. All 14 officers provided comprehensive statements to investigators. The shooting scene was photographed and videotaped, and pieces of evidence such as projectiles, canisters, shell cases and police service weapons were collected for examination.

In the Director's decision, he stated the findings of the eight week investigation compelled the conclusion that the officers all saw an immediate danger that one or more of them would be shot and that the subject officer's shooting was in fact justified in law. The Director and an SIU investigator met with members of the Grassy Narrows First Nation to discuss the investigation and the decision not to lay a criminal charge in connection with the tragic loss of life.

03-PVI-079

On July 2, 2003, at approximately 1:25 p.m., two OPP officers from the Stormont, Dundas and Glengarry detachment were dispatched to a personal injury motor vehicle collision. The subject officer was driving south in a marked OPP cruiser with the emergency lights on, when he came up behind a civilian car which was also traveling south. The driver of the car was initiating a left turn into a driveway when the police cruiser, which was attempting to overtake and pass the car, collided with it. The 25-year-old female driver suffered multiple fractures and her daughter had cuts on her head.

The SIU dispatched three investigators, three forensic identification technicians and one collision reconstructionist to the collision scene, arriving within three hours of the report. The scene was photographed and videotaped and the SOKKIA "total station" was used to gather data to complete the investigation. The SIU also issued a media release appealing for witnesses to the collision to contact the Unit and subsequently interviewed 14 civilian witnesses.

The Director of the SIU concluded that notwithstanding the high rate of speed, (the collision reconstruction report revealed that the cruiser was traveling at approximately 142 km/h two seconds before the impact), the evidence did not support a reasonable belief that the involved officer was criminally responsible for the collision that occurred. The Director noted that the officer was on duty and headed to the scene of a personal injury collision. In addition, the officer was driving a marked police vehicle whose emergency lights were activated as he came up behind the passenger car. The Director stated that the officer had a basis for a reasonable expectation that users of the roadway would allow him to overtake and pass without difficulty.

03-OVD-113

On August 8, 2003, at approximately 7:00 p.m., a London Police Service (LPS) officer was responding to a report of a missing child when he observed a motorcyclist driving erratically. The officer initiated a pursuit with the cruiser's emergency equipment intermittently activated as the motorcyclist drove through red traffic signals at a high rate of speed. A second LPS officer observed the motorcycle weaving through traffic. Both officers continued following the motorcycle until they lost sight of it, at which time they proceeded to the call for the missing child. The motorcyclist continued to speed down the road and while attempting to weave between several cars that had stopped at a traffic signal his motorcycle collided with the rear of a pick-up truck. The motorcyclist received fatal injuries.

Upon notification from the LPS, eight SIU investigators, including three forensic identification technicians and a collision reconstructionist, were deployed, arriving approximately two hours after the report of the incident. During the course of the investigation, over 25 police and civilian witnesses provided statements to investigators. The collision scene was photographed, videotaped, and a scale diagram was produced.

The Director concluded that throughout the period of the police pursuit, the involved officer acted reasonably, did not travel at excessive speeds, and did not put any improper pressure on the motorcyclist to flee. Moreover, the evidence lead to the conclusion that the pursuit ended before the motorcyclist reached the intersection at which the collision occurred.

03-OCI-179

On December 20, 2003, at approximately 7:00 p.m. an officer of the Brantford Police Service (BPS) responded to a disturbance call. He arrived to find four men fighting, two of whom departed. Once another officer arrived, the first officer began to search for the two who had left and he found them at nearby coffee shop. The youth did not cooperate as the officer attempted to arrest and handcuff him. The officer asked him to stop resisting arrest, and the youth hit the front of his head when he was brought to the ground. He was taken to hospital for medical treatment. The medical report indicated that an injury on the back of his head was the cause of a brain haemorrhage, while the injury to his forehead was minimal and unrelated. The youth recovered from his injuries.

The SIU dispatched five investigators, including two forensic identification technicians, to the scene of the arrest. Because the youth had been involved in an altercation prior to his involvement with police the BPS was given priority in the investigation of that altercation, while the SIU had investigative priority in matters relating to his arrest. There was one designated subject officer and two witness officers. The SIU interviewed 10 civilian and police witnesses, reviewed videotapes from the scene, and examined the medical report.

The Director concluded that under the circumstances the officer was entitled to take immediate, forceful steps to bring the youth completely under his control during the course of the arrest. The investigation determined that the gash on his forehead was related to the arrest and the haemorrhage was related to a previous altercation that night and was not caused by police action.

03-OCI-039

On April 15, 2003 at approximately 6:40 p.m., three Sault Ste Marie Police Service officers responded to a report of a man armed with a knife behind a beer store. The officers found two men arguing, one of whom was brandishing a knife. The man without a knife fled the scene and one of the officers pursued him. One of the two remaining officers attempted to negotiate with the man with the knife in an effort to get him to put it down. The man dropped to his knees, put the knife point to his chest and fell forward onto the knife. The knife punctured his chest and he received medical assistance from the officers while waiting to be taken to hospital, where he was treated and released.

Four SIU investigators were assigned to conduct the investigation. One officer was designated a subject officer and five witness officers were identified. As part of the probe, investigators interviewed 15 people, both police and civilian witnesses and reviewed a surveillance tape and police notes. The investigation was concluded in less than two weeks.

The Director of the SIU stated that all of the evidence gathered during the course of the investigation was consistent in confirming that the man involved in the incident inflicted his own wound and that the involved police officers were acting properly in the course of their duties at the time. He added there was no reason to believe the subject officer could have done anything to prevent the injury and every reason to believe that the officers acted commendably in coming to his assistance after the man stabbed himself.

Investigation Follow-up

The 2001-02 Annual Report described an SIU investigation involving an officer of the Niagara Regional Police Service. This case study provides follow-up information about events post-investigation.

On April 20, 2001, a Niagara Regional Police Service officer, driving a marked cruiser, was responding to a priority call for service when he was involved in a motor vehicle collision with another car. The police cruiser struck the rear of a station wagon at an intersection and a passenger in the car sustained fatal injuries as a result of the collision.

The SIU dispatched eight investigators, including three forensic identification technicians, to the incident scene. During the 13-week probe, the investigators mechanically examined the two involved vehicles, interviewed dozens of police and civilian witnesses, reviewed copies of relevant police policies and procedures and conducted a mapping of the scene, including scene diagrams and photographs. A detailed collision reconstruction report was prepared.

Based on the findings of the investigation, the Director of the SIU concluded that there were reasonable grounds to believe that the subject officer was criminally liable. Accordingly, the Director caused a charge of dangerous driving causing death to be laid against the subject officer. This case was dealt with by the courts, and on March 18, 2004, a jury found the subject officer not guilty.

Communications

Confidence in the SIU

Maintaining the community's confidence in the police services of Ontario is the SIU's mission and this can be accomplished only to the extent that the public understands and has trust in the work of the SIU.

The SIU is committed to transparency and accessibility. The SIU uses its Annual Report, the website, and brochures to communicate information about the Unit. In addition to conducting investigations, the SIU provides accurate and timely information on the status and results of its investigations. Most often, this is done by way of news releases and responding to media inquiries.

The Unit must also ensure that during investigations the information it provides does not jeopardize the evidence or rights of all those involved to a fair and unbiased investigation. The SIU provides comprehensive, detailed results from the investigation once an investigation is complete and charges have not been laid. In cases where a charge is laid, the information that the SIU can provide is limited in order to preserve the integrity of the subsequent trial process.

Outreach

The Honourable George Adams identified the importance of outreach by the SIU in his 2003 Review Report, and the Unit continues to embrace every opportunity to speak with stakeholder organizations. Members of the SIU were involved in community outreach activities over the past year, including 17 presentations to students in high schools, colleges and university classes. SIU staff also met with coroners, members of government, and other oversight agencies around the world, to promote and increase understanding of the role of the SIU and of civilian oversight of the police in general.

Community Focus

The Director's Resource Committee provides a forum for communication between the SIU and the broader community. Meetings focus on how the SIU can best meet community needs and expectations, and on providing feedback to the SIU on matters that are of concern to the community. The SIU also uses these meetings to provide updates to committee members on operational matters. The Resource Committee met twice in 2003-04.

Police Services

Outreach to police provides an opportunity for the SIU to talk about its role and how investigations are conducted by the Unit. It is also essential in encouraging discussions about the co-operation and obligations of the police during SIU investigations. In 2003-04, the SIU maintained communication with representatives of the Ontario Association of Chiefs of Police (OACP) and the Police Association of Ontario (PAO). As well, members of the SIU made 20 presentations to post-secondary police foundations courses and recruit classes at the Ontario Police College, and met with senior police authorities, associations, and individual Chiefs of Police.

Assisting Policy-makers

In addition to routine outreach activities, from time to time the SIU contributes information and data to public discussions. For example, the SIU provided motor vehicle related statistics to the National Committee to Reduce Auto Theft, which were incorporated in its *Report on the Fatalities and Serious Injuries as Result of Stolen Motor Vehicles.* This work contributed to the development of regulations by Transport Canada requiring anti-theft immobilization devices to be installed on all cars built after September 2005. It is hoped that these regulations will contribute to a decrease in motor vehicle related injuries to, and deaths of, young offenders and police officers.

Complaints Process

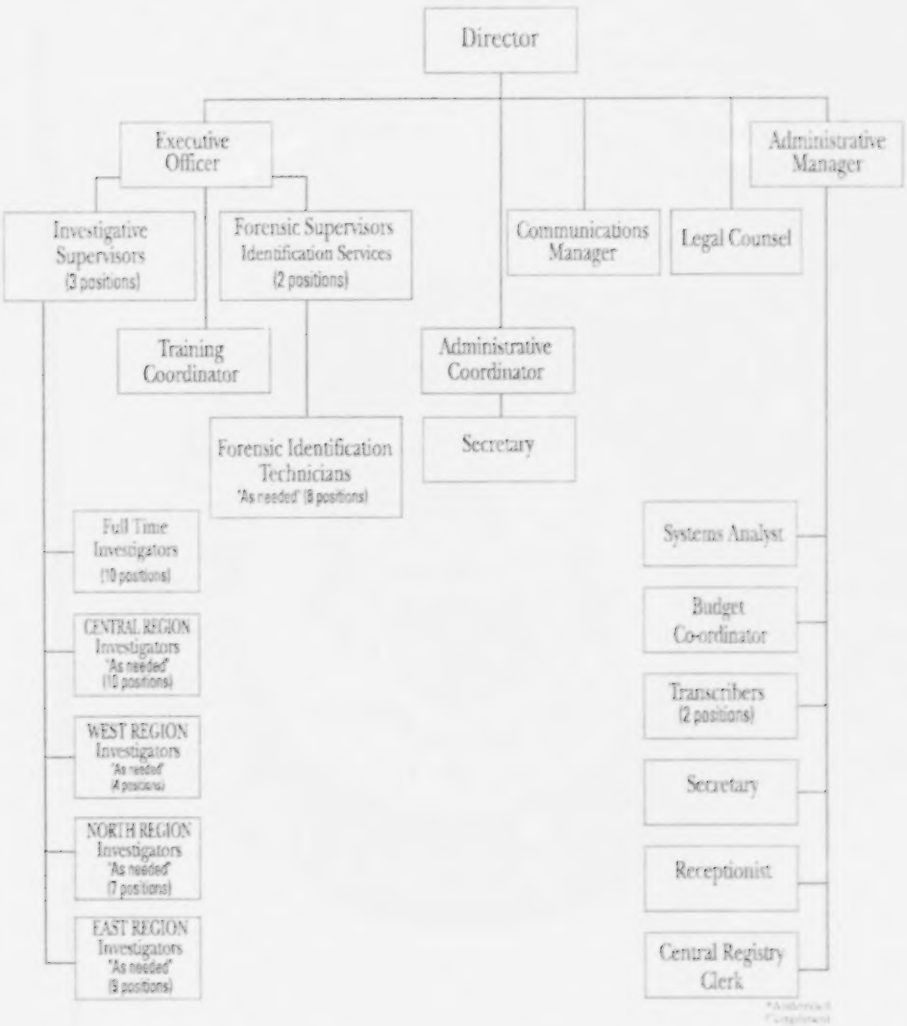
The SIU is committed to providing the highest quality of service and to being open and responsive to change. Occasionally the Unit receives complaints about its services, and there are procedures in place to address dissatisfaction with services provided by the SIU or the conduct of SIU personnel. Complaints can be made by those persons directly

affected by an SIU policy, service or conduct, within 30 days of the incident about which the complaint is being made.

Written, formal complaints are forwarded to the Director of the SIU, and an acknowledgement letter is sent within five days. Within 14 days of receipt of the complaint, the Director assigns a manager to investigate the complaint. If an employee has been named in the complaint, he or she is notified that a complaint has been received. The investigating manager may speak to SIU staff, the complainant, and relevant stakeholders. Case files, transcripts and other relevant documentation is also reviewed. A report is filed with the Director within 30 days of the date the investigator is assigned the case.

Human Resources and Staff Development

The SIU Team



In 1998, the SIU employed 36 people. Today there are 58 people working at the SIU, 46 of whom are directly involved in investigations. On the investigative side, there are three Investigative Supervisors and 10 full-time investigators who work out of the SIU's office in Mississauga, with the remainder located across the province and deployed on

an as-needed basis. The Investigative Supervisors have an average of 33 years investigative experience, while investigators have an average of 26 years experience each.

The Forensic Identification Section has two full-time Forensic Identification Supervisors and seven as-needed forensic identification technicians. Collectively, this group has 122 years of experience.

It should be noted that a human resource issue to have an impact on the SIU in 2003-04 was the fact that the Unit had an interim Director from April to December 2004. The interim Director concentrated on making decisions about investigations, the core business of the SIU.

Investigative Training

The 2003 Review Report on the SIU Reforms, written by the Honourable George Adams, commended the SIU for its training program and highlighted the continued importance of training to the organization. Investigations are the core business of the Unit and the SIU is committed to maintaining the quality of its investigations through training. Further to Recommendation 18 of the Report, the SIU plans to commission a peer review of its training programs.

Training all investigators to exceed investigative standards has been a priority for the Unit since its renewal in 1999, and by the end of 2002-03, all of the SIU's full-time investigators were trained in General Investigative Techniques and Major Case Management and Homicide. The intensive training investment over the past several years and the low turnover among the investigators meant that the SIU was able to shift its focus in 2003-04 to **maintaining** training standards for investigators.

The training program included a wide range of subject matter such as the use of event data recorders in vehicles. Supervisors participated in eleven external courses and the Unit conducted four in-house training sessions that centred upon case reviews. The Annual Investigators Seminar was held in September 2003. The first day of this two-day event covered subject apprehension pursuits, OPP training practices, and less than lethal

force weapons, which focused on the limitations, advantages, and disadvantages of Oleoresin Capsicum Spray (pepper spray), the TASER, the ARWEN rifle, and expandable batons. The second day focused on cultural and racial diversity training.

In 2003-04 there was an emphasis on management training, and SIU managers participated in a range of courses related to "Modern Controllership" which embraces the following concepts:

- ethical behaviour,
- conscious managing of risk,
- clear lines of accountability,
- stewardship of resources, and
- reporting and evaluation of results against stated objectives.

Modern Controllership is part of a profound and long-term shift in the way the public service manages. In total, the SIU sent 10 staff members on 25 Modern Controllership courses. As well, two managers participated in a pilot version of the Foundations Program for Managers, which provided training about how to deal with expanding demands and competing challenges.

In 2003-04 the SIU spent approximately 5% of its annual budget on training, reflecting the new emphasis on maintaining skills and knowledge. The direct cost of training was $81,000 and staff time spent on participating in training cost $185,000, for a total expenditure of $266,000. This represents an average training investment of approximately $4500 per employee.

Training Expenditures 2003-04

Financial Expenditures

For the year ended March 31, 2004 the total annual expenditures were $5,121,000 as follows:

2003-04 Expenditures

2003-04 Expenditures by Section

SIU PART THREE

Looking Forward

The context in which the SIU operates may offer challenges and require changes of the Unit in the years ahead.

The Attorney General, Michael Bryant, has enlisted the assistance of retired Chief Justice Patrick Lesage to lead a review of the system of civilian oversight of police in Ontario. The results of this review may have a very significant impact on the SIU and its mandate. The Unit will co-operate fully with the review, provide its perspective on civilian oversight if requested, and adjust to any changes that are made to its mandate by the Government as a result of the review.

The SIU may be called upon to respond to changes in legislation and police practices. In terms of legislative changes, there are new rules in criminal law regulating the criminal responsibility of organizations. The mandate of this Unit has not been adjusted in response to that legislative change. In terms of police practices that may affect the work of the Unit, there has been an advent in trans-jurisdictional policing (especially in border towns) and it is reasonable to expect more joint-forces initiatives in the context of anti-terrorism and anti-gang legislation. As well, there has been a rise in private policing in Ontario, with potential implications for the mandate of the Unit.

The SIU will continue to play a leadership role in civilian oversight and in that regard, the Unit has renewed its planning processes. The SIU will report on the progress it has made to implement the recommendations made in the 2003 Adams Review and will develop a new SIU Action Plan. The objectives of the Action Plan will be to expand

outreach, enhance public accessibility to the Director's decisions, and develop enhanced capability to support those affected by SIU investigations.

The SIU remains committed to investment in continuous learning in the face of fiscal realities. The current standard of professionalism and thoroughness of the Unit's investigations will not wane but, rather, will be reinforced.

Appendix A:

Definitions

Analogous Treatment

Under the *Police Services Act*, civilian members of police services are required to co-operate in SIU investigations. These individuals cannot however, be designated as subject or witness officers under Regulation 673/98 because they are not police officers and therefore, do not have the same legal protections. In order to relieve this disparity during an investigation, civilian members are treated in a way that is equivalent, or "analogous", to the treatment of a *subject* or *witness officer*, as the case may be. This means that when they are fulfilling their statutory duty to co-operate they effectively have the same protections as a police officer would in their circumstances.

Criminal Negligence

The SIU regularly investigates incidents such as police pursuits and some custody matters in which the basis for potential liability arises from the concept of negligence. Subsection 219(1) of the *Criminal Code* defines *criminal negligence* in the following terms:

Everyone is criminally negligent who
(a) in doing anything, or
(b) in omitting to do anything that it is his duty to do,
shows wanton or reckless disregard for the lives or safety of other persons.

Criminal negligence is distinguished from civil negligence in that the conduct in question will not amount to criminal negligence unless it amounts to a marked and substantial departure from the conduct of a reasonably prudent person in all the circumstances. In cases of *criminal negligence*, the required fault element is objectively based and will be found to exist where the harm encompassed in the offence in question can be seen to be within the reasonably foreseeable risk created by the conduct of the individual, in light of all the circumstances.

Custody

For the purposes of tracking cases at the SIU, the word "custody" refers to all incidents that are not related to sexual assault, are not firearms related or vehicle related, but do involve taking control of a person, exercising control of a person, attempts to control a person, attempts to regain control of a person, as well as what is generally known in the police community to mean arrest and detention.

Off Duty Officers

The SIU will not normally investigate incidents involving off duty police officers acting in the course of their private lives. If, however, an officer is off duty and police equipment or property is involved, or the officer identifies him/herself as a police officer in the course of the occurrence, the SIU will investigate the incident if it involves serious injury or death.

Serious injuries

"Serious injuries" shall include those that are likely to interfere with the health or comfort of the victim and are more than merely transient or trifling in nature and will include serious injury resulting from sexual assault. "Serious Injury" shall initially be presumed when the victim is admitted to hospital, suffers a fracture to a limb, rib or vertebrae or to the skull, suffers burns to a major portion of the body or loses any portion of the body or suffers loss of vision or hearing, or alleges sexual assault. Where a prolonged delay is likely before the seriousness of the injury can be assessed, the Unit should be notified so that it can monitor the situation and decide on the extent of its involvement.

Subject officers and witness officers

These are terms defined in Regulation 673/98:

"A *subject officer* means a police officer whose conduct appears, in the opinion of the SIU Director, to have caused the death or serious injury under investigation."
(A subject officer is not a "suspect" and does not become an accused until a charge has been laid.)
"A *witness officer* means a police officer who, in the opinion of the SIU Director, is involved in the incident under investigation but is not a subject officer."

Appendix B:

Excerpt from the *Ontario Police Services Act*, 1990, Part VII, SIU, Related Order in Council and Regulation 673/98

ONTARIO POLICE SERVICES ACT, 1990 PART VII SPECIAL INVESTIGATIONS UNIT

Section 113.

(1) There shall be a special investigations unit of the Ministry of the Solicitor General

(2) The unit shall consist of a director appointed by the Lieutenant Governor in Council on the recommendation of the Solicitor General and investigators appointed under the *Public Service Act*.

(3) A person who is a police officer or former police officer shall not be appointed as director, and persons who are police officers shall not be appointed as investigators.

(4) The director and investigators are peace officers.

(5) The director may, on his or her own initiative, and shall, at the request of the Solicitor General or Attorney General, cause investigations to be conducted into circumstances of serious injuries and death that may have resulted from criminal offences by police officers.

(6) An investigator shall not participate in an investigation that relates to members of a police force of which he or she was a member.

(7) If there are reasonable grounds to do so in his or her opinion, the director shall cause information to be laid against police officers in connection with the matters investigated and shall refer then to the Crown Attorney for prosecution.

(8) The director shall report the results of investigations to the Attorney General.

(9) Members of police forces shall cooperate fully with the members of the unit in the conduct of investigations.

Extract from Order in Council 814/93:

1. The administration of Part VII of this Act be assigned and transferred from the Solicitor General and Minister of Correctional Services to the Attorney General, effective April 8, 1993, and

2. The powers and duties of the Solicitor General, now vested in the Solicitor General and Minister of Correctional Services, pertaining to the Special Investigations Unit, with the exceptions of that set out in subsection 113 (5) of this Act, be assigned and transferred to the Attorney General, effective April 8, 1993.

REGULATION 673/98 MADE UNDER THE *POLICE SERVICES ACT*

CONDUCT AND DUTIES OF POLICE OFFICERS RESPECTING INVESTIGATIONS BY THE SPECIAL INVESTIGATIONS UNIT

1. (1) In this Regulation,

"SIU" means the special investigations unit established under section 113 of the Act;

"subject officer" means a police officer whose conduct appears in the opinion of the SIU director, to have caused the death or serious injury under investigation;

"witness officer" means a police officer who, in the opinion of the SIU director, is involved in the incident under investigation but is not a subject officer.

(2) The SIU director may designate an SIU investigator to act in his or her place and to have all the powers and duties of the SIU director under this Regulation and, if the SIU director appoints a designate, any reference to the SIU director in this Regulation, excluding this subsection, means the SIU director or his or her designate.

2. (1) The chief of police may designate a member of the police force who is not a subject officer or witness officer in the incident to act in the place of the chief of police and to have all the powers and duties of the chief of police in any matter respecting an incident under investigation by the SIU.

(2) If the chief of police appoints a designate under subsection (1), any reference to the chief of police in this Regulation, excluding this section, means the chief of police or his or her designate.

(3) The person appointed under subsection (1) must be a senior officer.

3. A chief of police shall notify the SIU immediately of an incident involving one or more of his or her police officers that may reasonably be considered to fall within the

investigative mandate of the SIU, as set out in subsection 113 (5) of the Act.

4. The chief of police shall ensure that, pending the SIU taking charge of the scene of the incident, the scene is secured by the police force in a manner consistent with all standing orders, policies and usual practice of the police force for serious incidents.

5. The SIU shall be the lead investigator, and shall have priority over any police force in the investigation of the incident.

6. (1) The chief of police shall, to the extent that it is practicable, segregate all the police officers involved in the incident from each other until after the SIU has completed its interviews.

(2) A police officer involved in the incident shall not communicate with any other police officer involved in the incident concerning their involvement in the incident until after the SIU has completed its interviews.

7. (1) Subject to subsection (2), every police officer is entitled to consult with legal counsel or a representative of the association and to have legal counsel or a representative of the association present during his or her interview with the SIU.

(2) Subsection (1) does not apply if, in the opinion of the SIU director, waiting for legal counsel or a representative of the association would cause an unreasonable delay in the investigation.

8. (1) subject to subsections (2) and (5) and section 10, immediately upon being requested to be interviewed by the SIU, and no later than 24 hours after the request where there are appropriate grounds for delay, a witness officer shall meet with the SIU and answer all its questions.

(2) A request to be interviewed must be made in person.

(3) The SIU shall cause the interview to be recorded and shall give a copy of the record to the witness officer as soon as it is available.

(4) The interview shall not be recorded by audiotape or videotape except with the consent of the witness officer.

(5) The SIU director may request an interview take place beyond the time requirement as set out in subsection (1).

9. (1) A witness officer shall complete in full the notes on the incident in accordance with his or her duty and, subject to subsection (4) and section 10, shall provide the notes to the chief of police within 24 hours after a request for the notes is made by the SIU.

(2) Subject to subsection (4) and section 10, the chief of police shall provide copies of a witness officer's notes to the SIU upon request, and no later than 24 hours after the request.

(3) A subject officer shall complete in full the notes on the incident in accordance with his or her duty, but no member of the police force shall provide copies of the notes at the request of the SIU.

(4) The SIU director may allow the chief of police to provide copies of the notes beyond the time requirement set out in subsection (2).

10. (1) The SIU shall, before requesting an interview with a police officer or before requesting a copy of his or her notes on the incident, advise the chief of police and the officer in writing whether the officer is considered to be a subject officer or a witness officer.

(2) The SIU shall advise the chief of police and the police officer in writing if, at any time after first advising them that the officer is considered to be a subject officer or a witness officer, the SIU director decides that an officer formerly considered to be a subject officer is now considered to be a witness officer or an officer formerly considered to be a witness officer is now considered to be a subject officer.

(3) If, after interviewing a police officer who was considered to be a witness officer when the interview was requested or after obtaining a copy of the notes of a police officer who was considered to be a witness officer when the notes were requested, the SIU director decides that the police officer is a subject officer, the SIU shall,

(a) advise the chief of police and the officer in writing that the officer is now considered to be a subject officer;

(b) give the police officer the original and all copies of the record of the interview; and

(c) give the chief of police the original and all copies of the police officer's notes.

(4) The chief of police shall keep the original and all copies of the police officer's notes

returned under clause (3) (c) for use in his or her investigation under section 11.

11. (1) The chief of police shall also cause an investigation to be conducted forthwith into any incident with respect to which the SIU has been notified, subject to the SIU's lead role in investigating the incident.

(2) The purpose of the chief of police's investigation is to review the policies of or services provided by the police force and the conduct of its police officers.

(3) All members of the police force shall cooperate fully with the chief of police's investigation.

(4) The chief of police of a municipal police force shall report his or her findings and any action taken or recommended to be taken to the board within 30 days after the SIU director advises the chief of police that he or she has reported the results of the SIU's investigation to the Attorney General, and the board may make the chief of police's report available to the public.

(5) The Commissioner of the Ontario Provincial Police shall prepare a report of his or her findings and any action taken within 30 days after the SIU director advises the Commissioner that he or she has reported the results of the SIU's investigation to the Attorney General, and the Commissioner may make the report available to the public.

12. (1) The police force may disclose to any person the fact that the SIU director has been notified of an incident and is conducting an investigation into it.

(2) Except as permitted by this Regulation, the police force and members of the police force shall not, during the course of an investigation by the SIU, disclose to any person any information with respect to the incident or the investigation.

13. The SIU shall not, during the course of an investigation by the SIU, make any public statement about the investigation unless such statement is aimed at preserving the integrity of the investigation.

14. A chief of police or police officer shall not be required to comply with a provision of this Regulation if, in the opinion of the SIU director, compliance is not possible for reasons beyond the chief of police's or police officer's control.

15. This Regulation comes into force on January 1, 1999.